United Nations E/2007/82

Economic and Social Council

Distr.: General
25 June 2007

Original: English

Substantive session of 2007
Geneva, 2-27 July 2007
Item 14 (g) of the provisional agenda*
Social and human rights questions: human rights

Report of the United Nations High Commissioner for Human Rights**

Summary

The present report, submitted pursuant to General Assembly resolution 48/141 of 20 December 1993, focuses on the concept of "progressive realization" of economic, social and cultural rights in international human rights law.

Section II explores the meaning of the concept of progressive realization and how the United Nations human rights treaties allow for the gradual realization over time of economic, social and cultural rights while imposing obligations requiring immediate implementation by States parties. In section III some of the issues arising from the practical implementation of obligations subject to progressive realization are examined, as well as the measures and national strategies to move towards the progressive achievement of economic, social and cultural rights. Section IV focuses on the role of independent monitoring by the human rights treaty bodies and on different ways of monitoring the progressive realization of economic, social and cultural rights.

* E/2007/100.

** The present report was submitted late in order to reflect the most recent information.

07-39433 (E) 180707

Contents

		Paragraphs	Page
I.	Introduction	1–2	3
II.	The concept of the progressive realization of economic, social and cultural rights	3–27	3
	A. The relevant treaty provisions	3–4	3
	B. The "maximum available resources" clause	5–13	4
	C. Obligations of immediate effect	14–27	6
III.	Practical implications for policies, strategies and programmes	28–44	8
	A. The measures to be undertaken	29–36	8
	B. Requirements for policies, strategies and programmes	37–44	10
IV.	Monitoring of progressive realization by the treaty bodies	45–75	12
	A. Periodic review and reporting: the use of indicators and benchmarks	47–56	13
	B. Monitoring of national budget processes	57–65	15
	C. Review of violations relating to progressive realization	66–75	16
V.	Concluding remarks	76–80	19

I. Introduction

1. The present report, submitted pursuant to General Assembly resolution 48/141 of 20 December 1993, focuses on the concept of the progressive realization of economic, social and cultural rights under international human rights law. The report complements my report to last year's substantive session of the Economic and Social Council (E/2006/86), which was dedicated to the issues of legal protection of economic, social and cultural rights.

2. The concept of progressive realization is of pivotal importance in defining obligations of economic, social and cultural rights as set out in the United Nations human rights treaties. Moreover, the concept has direct relevance to efforts to achieve internationally agreed development targets such as the Millennium Development Goals.[1] Yet, as with the issue of the "justiciability" and legal protection of economic, social and cultural rights, the concept of progressive realization is often misunderstood. Thus, it is sometimes taken to mean that economic, social and cultural rights, by definition, are not immediately applicable or that these rights are merely aspirational goals and too vaguely defined to impose clear obligations on States. The present report aims to dispel such misconceptions.

II. The concept of the progressive realization of economic, social and cultural rights

A. The relevant treaty provisions

3. The concept of progressive realization is a simplified way to describe a central aspect of States parties' obligations relating to certain economic, social and cultural rights as set out in three of the nine core international human rights treaties:[2] the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.[3] The concept is defined in specific articles setting forth the general obligations of States parties under those treaties. The articles read as follows:

International Covenant on Economic, Social and Cultural Rights, article 2, paragraph 1

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Convention on the Rights of the Child, article 4

> States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Convention on the Rights of Persons with Disabilities, article 4, paragraph 2

> With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

4. While there are slight variations in the wording of the above-cited articles, the essence of the concept of progressive realization can be described as the obligations of States parties: (a) to undertake all appropriate measures towards the implementation, or full realization, of economic, social and cultural rights, and (b) to do so to the maximum extent of their available resources.[4]

B. The "maximum available resources" clause

5. The "maximum available resources" clause, qualifying the obligation to take steps towards the full realization of rights, is a key defining feature of the concept of progressive realization. As the drafting history of the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities shows, a main rationale for defining obligations of economic, social and cultural rights in terms of progressive realization was to acknowledge that in many countries the full realization of those rights could only be achieved over a period of time owing to resource constraints.[5]

6. The Committee on Economic, Social and Cultural Rights, established to monitor compliance with the International Covenant on Economic, Social and Cultural Rights, has described the concept of progressive realization as "a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights".[6] Likewise, the Committee on the Rights of the Child, which monitors compliance with the Convention on the Rights of the Child, notes that the concept "reflects a realistic acceptance that lack of resources — financial and other resources — can hamper the full implementation of economic, social and cultural rights in some States".[7]

7. It should be noted that the term "available resources" includes resources available to a State internationally, as reflected in the references to international cooperation in the above-cited articles. Equally, the term not only refers to the financial capacity of a State, but also to other types of resources relevant to the realization of economic, social and cultural rights, such as human, technological and information resources.

8. The qualification of resource availability allows for a degree of flexibility in the application of treaty obligations, insofar as the level of resources available to a given State party partly defines the yardstick against which compliance is measured.[8] To illustrate the point, while State party A (rich in resources) and State party B (with scarce resources) assume the same treaty obligation, State party A would be expected to be able to secure a higher level of rights realization than State party B.

9. It is important to underline, however, that the degree of flexibility introduced by the "maximum of available resources" clause is relative to the resource implications of fulfilling a particular right. Hence, if only a few resources are required to fulfil a given right, the relevance of the clause diminishes and a similar level of rights realization would be expected in both country A and country B.

10. In this regard, it is relevant to highlight the different types of State obligations. As the Committee on Economic, Social and Cultural Rights has noted, each economic, social and cultural right gives rise to three types of obligations, namely the obligations to respect, protect, fulfil:[9]

(a) The obligation to respect requires a State to refrain from interfering with the freedom of the individual;

(b) The obligation to protect requires a State to prevent other individuals and groups (third parties) from interfering with a right of the individual;

(c) The obligation to fulfil requires a State to take positive measures to ensure the satisfaction of a right.

11. The implementation of the obligations to respect and protect generally requires fewer resources than is the case for the obligation to fulfil, and States would often be in a position to implement those obligations without delay. For example, in some instances measures to promote a particular right may require a State to abstain from certain action (obligation to respect), such as refraining from carrying out forced evictions; or to secure rights of individuals against infringement by third parties (obligation to protect), for example by ensuring that employers comply with health and safety regulations.

12. The obligation to fulfil, on the other hand, generally places a greater burden on a State's resources. However, the resource implications and the relevance of the "resource availability" clause vary, depending on the particular measures undertaken to fulfil a particular right. In this regard, it is relevant to note that the obligation to fulfil can be further subdivided into three main dimensions:

(a) The obligation to fulfil (facilitate) requires States parties to undertake positive measures and enabling strategies to assist individuals to enjoy their rights, for example by ensuring that education in schools is of a good quality and culturally appropriate for minorities;

(b) The obligation to fulfil (promote) imposes a duty to disseminate information and undertake educational measures to raise awareness about a particular right;

(c) The obligation to fulfil (provide) requires States parties to provide for rights directly in cases where an individual or group is unable, for reasons beyond their control, to enjoy a right by the means at their disposal.

13. As is discussed further below, even with regard to human rights objectives with significant cost implications, such as ensuring adequate health facilities, goods and services for a whole population, a lack of resources cannot justify inaction or indefinite postponement of progress towards the realization of rights.

C. Obligations of immediate effect

14. The notion of the progressive realization of rights is easily confused with the idea that treaty obligations relating to economic, social and cultural rights are somehow assumed in a piecemeal fashion. That assumption is clearly wrong.

Obligations not subject to resource availability and progressive realization

15. First of all, it is important to note that not all obligations relating to economic, social and cultural rights are subject to progressive realization and the "maximum of available resources" clause. Notably, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities all impose an immediate obligation to guarantee that economic, social and cultural rights are enjoyed without discrimination.[10] Accordingly, measures towards the progressive achievement of rights must at all times be guided by, and comply with, the basic requirement of non-discrimination.

16. Likewise, a number of specific treaty obligations under the International Covenant on Economic, Social and Cultural Rights are generally considered to require immediate implementation irrespective of the level of resources available to a State. For example, the obligation to ensure the right to form and join trade unions and to strike (art. 8) and the obligation to protect children and young persons from economic and social exploitation (art. 10 (3)), among others.[11]

The immediate obligation to take steps

17. Secondly, even with regard to the general obligations defining the concept of progressive realization (set out in the articles listed in section A above), it would be mistaken to refer to those obligations as not being of immediate effect.

18. While article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights and the equivalent articles of the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities allow for a gradual realization of some economic, social and cultural rights, the obligation, in itself, to undertake measures towards such progressive realization is of immediate effect. As the Committee on Economic, Social and Cultural Rights has underlined, article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights places an immediate obligation on States parties to undertake deliberate, concrete and targeted measures, making the most efficient use of available resources, to move as expeditiously and effectively as possible towards the full realization of rights.[12] Hence, all States parties, irrespective of their level of available resources, are under an immediate obligation to make a best effort, to the maximum of their available resources, to make progress in the realization of rights.

The presumption against retrogressive measures

19. According to the Committee on Economic, Social and Cultural Rights, the immediate obligation to take steps and move as expeditiously as possible towards the full realization of rights implies a strong presumption of impermissibility of deliberate retrogressive measures, that is, measures which result in the deterioration of a right's current level of fulfilment.[13] By way of example, the introduction of user fees in secondary education which had formerly been free of charge would

constitute a deliberate retrogressive measure. In order to justify such retrogressive measures, a State party would have to demonstrate that they have only been adopted after "the most careful consideration of all the alternatives" and can be "justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources".[14]

Minimum core obligations

20. Finally, the Committee on Economic, Social and Cultural Rights and a number of special rapporteurs of the Human Rights Council have noted that States parties to the International Covenant on Economic, Social and Cultural Rights are under an immediate obligation to satisfy, as a matter of priority, "minimum essential levels of each of the rights" recognized in the Covenant, also referred to as "minimum core obligations".[15] Moreover, the Committee considers that failing to ensure such minimum essential levels of rights fulfilment constitutes a prima facie violation of the Covenant. In such cases the burden of proof rests on the State party to justify its actions by demonstrating that it has made every effort to use the resources at its disposal to satisfy, as a matter of priority, minimum core obligations.[16]

21. It should be noted in this regard that the Covenant only provides limited guidance as to the definition of such minimum levels of rights fulfilment, apart from "the right of everyone to be free from hunger" (art. 11) and the provision that "primary education shall be compulsory and available free to all" (art. 13). However, the Committee on Economic, Social and Cultural Rights has in its recent general comments, since 2000, sought to provide guidance as to what it would consider minimum essential levels of fulfilment for a number of rights.[17] The minimum core obligations identified include among others the obligations:

> To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;
>
> To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;
>
> To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs.[18]

22. Arguably, core minimum levels of rights fulfilment are to some extent dependant on the specific situation of a given State. Thus the Commission on Human Rights, in a resolution adopted in 1994, invited States parties to the International Covenant on Economic, Social and Cultural Rights "to identify specific national benchmarks designed to give effect to the minimum core obligation to ensure the satisfaction of the minimum essential levels of each of the rights".[19]

Differences from and similarities to obligations relating to civil and political rights

23. It is worth noting that the importance of resources and gradual realization over time are not unique features of economic, social and cultural rights. Aspects of all human rights may have considerable resource implications and may often, as a matter of practical implementation, only be realized over a period of time. Suffice it here to consider the substantial costs of the infrastructure needed for an effectively functioning criminal justice system. Equally, obligations to "respect" and "ensure" civil and political rights also require States to move as expeditiously as possible towards the realization of these rights. Hence the drafters of the International

Covenant on Civil and Political Rights generally agreed that article 2, which sets forth the general nature of obligations, implied "the notion of implementation at the earliest possible moment".[20]

24. Still, there is a clear difference between obligations subject to progressive realization and those which demand that States immediately ensure a particular right or standard. The former set a more flexible standard, as the actual capacity of a State party effectively to implement certain rights is taken into account in assessing compliance.

25. For example, while failure to ensure universal access to a fair trial would by definition constitute a violation of article 14 of the International Covenant on Civil and Political Rights, this would not necessarily be the case for failure to ensure access to affordable medicines. A State may not be in breach of its international human rights obligations if it can demonstrate that affordable medicines are not available and that it is undertaking measures to the maximum of available resources to address the problem.

26. Equally, failure to ensure a core minimum level of the right to the highest attainable standard of health (such as access to essential drugs) would be considered a prima facie violation, rather than an outright violation of the treaty. That is, whether or not the State party is in breach of its international obligations depends on its ability to demonstrate that it has made full use of its available resources to remedy the situation.

27. It should be noted, however, that those economic, social and cultural rights obligations which are not subject to progressive realization (akin to civil and political rights obligations) do not allow for a similar leeway in their implementation. By way of example, a State failing to protect individuals against discrimination in access to medicines would be in breach of its obligations under article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights, irrespective of the resource constraints it faced.

III. Practical implications for policies, strategies and programmes

28. In the following section the implications of the concept of progressive realization for States' actions are considered, with particular focus on the kind of measures required to give effect to economic, social and cultural rights and how the international norms and standards set out some broad requirements for the process of devising, implementing and monitoring policies, strategies and programmes.

A. The measures to be undertaken

29. The human rights treaties and the treaty bodies provide only some general indications as to the kind of measures to be taken, reflecting the impossibility of prescribing any single list of measures to implement economic, social and cultural rights. As the Committee on Economic, Social and Cultural Rights has pointed out, the most appropriate means of implementing these rights will inevitably differ from one State to another depending on their particular circumstances. Accordingly, States parties are afforded a wide margin of appreciation in determining their own

approaches and measures.[21] However, as is described further below, the margin of appreciation is not absolute, as the international human rights norms and standards provide a general framework for State action.

All appropriate means

30. Article 2, paragraph 1, of the International Covenant on Civil and Political Rights specifies the obligation to take steps "by all appropriate means, including particularly the adoption of legislative measures", while article 4 of the Convention on the Rights of the Child imposes the obligation to "undertake all appropriate legislative, administrative and other measures" for the implementation of economic, social and cultural rights. Given that the international treaties provide a legal basis for measures to promote economic, social and cultural rights, the emphasis on legislative measures is appropriate. Thus, a basic first step required of any State party to an international human rights treaty is to ensure that domestic legislation is in full conformity with the provisions of that treaty.[22] Moreover, the adoption of legislative measures would seem to be an indispensable element of implementing many aspects of the rights recognized in the Covenant. In this regard, the Committee on Economic, Social and Cultural Rights has placed special emphasis on the need to provide access to appropriate mechanisms of legal redress and remedies for breaches of Covenant rights.[23]

31. While legislative measures are of fundamental importance, the implementation of economic, social and cultural rights depends to a large extent on public policies and programmes. As the Committee has noted, the phrase "'by all appropriate means' must be given its full and natural meaning" and would include administrative, financial, education and social measures.[24] The Covenant itself provides some further guidance as to the kind of measures envisaged. Thus, a number of articles include non-exhaustive examples of "the steps to be taken by the States parties" to achieve the full realization of those rights. For example, article 6 (right to work) states that steps should include "technical and vocational guidance and training programmes", while article 11, paragraph 2 (right to be free from hunger), specifies that measures should include "disseminating knowledge of the principles of nutrition".[25]

32. Equally, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have provided some general guidance in their recommendations to States parties and in their general comments. For example, the treaty bodies frequently call for educational measures as a means to promote economic, social and cultural rights. However, in their recommendations to States parties the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child do not prescribe specific measures to be undertaken, in accordance with the margin of appreciation accorded to States parties. For example, concerning a specific problem of child labour in a given country, the treaty bodies would urge the State party concerned to take effective measures to address the problem, but leave it to the State to decide on the measures it deems to be the most appropriate in its specific circumstances.

33. In some cases, guidance on measures to give effect to specific rights is also found in internationally agreed plans of action. Thus, several global strategies adopted under the auspices of the United Nations detail measures required for the implementation of rights recognized in the International Covenant on Economics,

Social and Cultural Rights. Such global strategies include the Global Strategy for Shelter (General Assembly resolution 43/181); the International Plan of Action on Ageing (see General Assembly resolution 57/167); the ILO Global Strategy on Occupational Safety and Health; and the WHO Global Strategy on Diet, Physical Activity and Health.[26]

Governments' role in fulfilling rights

34. It is worth noting that measures to promote economic, social and cultural rights do not automatically require direct State involvement in the provision of services to give effect to specific rights. For example, in most countries food is produced by the private sector, including large-scale as well as subsistence or small-scale farming. Consequently, States are primarily under a duty to fulfil (facilitate) the right to food by, for example, taking measures to strengthen the access of rural people to resources and the means to ensure their livelihoods. Only in those cases where individuals are not able to ensure access to adequate food by the means at their disposal would the State be under an obligation to fulfil (provide) the right through more direct intervention (e.g. in the form of temporary food assistance to needy families).[27]

35. Nonetheless, while concrete measures for the implementation of economic, social and cultural rights are often undertaken by private actors, Governments and public officials remain primarily responsible for ensuring progress towards the realization of rights. In particular, Governments, at national and local levels, must take measures to ensure that limited resources, public as well as private, are used in the most effective manner to promote the realization of rights, giving particular attention to improving the situation of those most in need. For example, public subsidies or tax credits may be used to encourage private developers to construct low-cost housing for low-income individuals and families.

36. Moreover, as the international human rights treaties underline, international cooperation is an important means towards the progressive realization of economic, social and cultural rights. States parties have a shared responsibility to engage in international cooperation to make progress in the realization of economic, social and cultural rights and meeting internationally agreed goals and commitments such as the Millennium Development Goals.

B. Requirements for policies, strategies and programmes

37. While each State must define the specific measures which it deems most appropriate to its particular circumstances, the immediate obligation "to take steps" or "undertake measures" requires, as a minimum, the formulation of national strategies for the implementation of economic, social and cultural rights. The human rights norms and standards set out some general requirements for the elaboration and implementation of such strategies.

The formulation, implementation and monitoring of strategies

38. As the Committee on Economic, Social and Cultural Rights has stressed, the obligation in article 2, paragraph 1, of the Covenant "to take steps ... by all appropriate means" implies an immediate obligation to adopt strategies for the progressive implementation of each of the rights recognized in the Covenant.[28] The

human rights standards impose a number of requirements for how such strategies should be devised.

39. First, a basic requirement for formulating a strategy and defining relevant goals of public policy is to carry out an assessment of the actual state of realization of economic, social and cultural rights. Such an assessment, in turn, entails a number of other requirements. Importantly, States need to put in place systems to enable them both to collect and to analyse relevant data. Moreover, the data collected must be suitably disaggregated in order to make it possible to identify problems of discrimination, and groups in society which are particularly vulnerable and disadvantaged in their enjoyment of rights. Thus, to the extent possible, data should be disaggregated by variables such as sex, age, socio-economic situation, urban/rural areas and ethnic origin.

40. Second, human rights assessments must be used as a basis for devising coherent and targeted strategies to address specific challenges which have been identified and to promote the full realization of economic, social and cultural rights.[29] Such strategies will often require an intersectorial approach involving different areas and levels of government. Moreover, strategies for the realization of human rights should be linked to national development planning to ensure appropriate political and institutional commitment, as well as dedicated and sustainable funding for their implementation.[30] Equally, national strategies must define and incorporate indicators and benchmarks designed to assess progress in the implementation of rights.[31]

41. Third, following their formulation, national strategies must be implemented. In this regard, one important requirement is to ensure that strategies set realistic, achievable targets and that adequate funds are made available for their realization. In doing so, Governments must not only seek to make the most efficient use of often limited public resources, but also seek to mobilize private and community resources for the implementation of economic, social and cultural rights. Moreover, the implementation of strategies and policies requires effective coordination of efforts (often involving multiple actors) for the realization of human rights.

42. Fourth, the implementation of the strategies must be monitored and regularly assessed. As the Committee on the Rights of the Child has pointed out, "developing a national strategy is not a one-off task" but should include arrangements for monitoring and periodic review, for example through annual reports to parliament and the public.[32] Such periodic monitoring should serve as a basis for reviewing and adjusting policies and strategies, thus initiating a new cycle of human rights assessments, elaboration of strategies, implementation and monitoring.

Guiding principles for policymaking

43. The process of developing, implementing and monitoring national strategies must at all times be guided by the international human rights norms and standards.[33] In relation to the implementation of economic, social and cultural rights, the following guiding principles are particularly important:

(a) Strategies and policy priorities should be devised, implemented and monitored on the basis of a participatory and transparent process.[34] In particular, information on strategies and policies should be made easily available to the public, in adequate formats.

(b) Strategies and policies must give priority to ensuring that no one is discriminated against in his or her enjoyment of economic, social and cultural rights. For example, the Committee on Economic, Social and Cultural Rights has pointed out how inappropriate resource allocations may be discriminatory in their effect if they disproportionately favour a specific group.[35] Moreover, in order to address conditions which cause or perpetuate discrimination, States may be required to adopt temporary special measures, for example to accelerate the realization of women's de facto equality with men in employment.[36]

(c) Strategies must give particular attention to protecting marginalized and vulnerable members of society. In the face of resource constraints, it is particularly important that States ensure a targeted and cost-effective use of resources (human, technological, financial, etc.) for the realization of economic, social and cultural rights of marginalized and vulnerable groups.[37]

(d) The fulfilment of minimum core obligations must be a first priority in policy and budget decisions. Governments must make a best effort to ensure that limited resources are directed towards satisfying, at the very least, minimum levels of rights fulfilment, such as ensuring universal access to compulsory primary education free of charge, and that everyone has access to basic medical care and essential drugs.

44. It should be noted that the requirements mentioned above for principled policymaking are equally relevant to international efforts to realize the Millennium Development Goals. As the Committee on Economic, Social and Cultural Rights and the Special Rapporteurs on economic, social and cultural rights have underlined in a joint statement, the international human rights standards and the concepts of progressive realization and resource availability "are important guidelines of any strategy which aims at reaching the [Millennium Development] Goals".[38]

IV. Monitoring of progressive realization by the treaty bodies

45. Monitoring the progressive realization of economic, social and cultural rights serves two main purposes. On the one hand, as mentioned in the previous section, monitoring should be part of the ongoing assessment by States of the effectiveness of programmes, legislation and policies. On the other hand, monitoring should also ensure transparency and accountability in the implementation of human rights obligations undertaken by States. To accomplish the latter, the self-monitoring of Governments must be supplemented by monitoring by independent bodies to ensure accountability.

46. A range of actors can potentially play a role in such independent monitoring at the national level, for example national human rights institutions, parliamentary committees, civil society organizations, social movements, academia and the press.[39] The main focus of the present section, however, is on the monitoring of the international human rights treaties carried out by the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the other treaty monitoring bodies. In particular, three distinct forms of monitoring are examined: periodic assessments with the use of human rights indicators and benchmarks; monitoring and analysis of national budget processes; and judicial and quasi-judicial review of violations related to the progressive realization of economic, social and cultural rights.

A. Periodic review and reporting: the use of indicators and benchmarks

47. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have shown a long-standing and continuing interest in statistical indicators to assess progress in the implementation of economic, social and cultural rights. Statistical indicators which are devised and used for the purpose of assessing the state of enjoyment of human rights are referred to as "human rights indicators".[40] For example, statistics on school enrolment, disaggregated by sex and urban/rural areas help assess and monitor the implementation of the right to education.

48. While the United Nations system and national statistical bureaux collect a wealth of socio-economic statistics, a common approach on how to use such data as human rights indicators has been generally lacking.[41] In recent years, however, significant progress has been made in identifying appropriate indicators to monitor the progressive realization of economic, social and cultural rights, including through several initiatives within the United Nations system. Notably, the United Nations Development Programme (UNDP) *Human Development Report 2000* proposed a general framework for using statistical indicators to monitor human rights,[42] while United Nations agencies and programmes, including the Food and Agriculture Organization of the United Nations (FAO) and UN-Habitat, have embarked on efforts to develop indicators for the progressive realization of the human rights to health, food and housing.[43]

49. Equally, the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, in his recent reports, provides a conceptual framework for "right to health indicators", as well as illustrative lists of indicators for monitoring child survival as an aspect of children's right to health.[44] Similarly, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, in his latest report to the Council, has proposed a list of indicators for monitoring implementation of the right to adequate housing.[45]

50. The Office of the United Nations High Commissioner for Human Rights (OHCHR) also supports work in this area. Importantly, in response to a request by the chairpersons of the human rights treaty bodies,[46] OHCHR, in consultation with a panel of experts, has developed a conceptual and methodological framework for using quantitative indicators and other statistical information to promote and monitor the implementation of human rights, economic, social and cultural, as well as civil and political rights.[47]

51. The proposed conceptual framework seeks to translate universal human rights standards into indicators that are contextually relevant and operational at the country level.[48] More specifically, the framework translates the normative content of the core international human rights instruments into a few attributes and a configuration of "structural", "process" and "outcome" indicators. For a particular right, the identified indicators assess the steps taken by a State party in addressing its obligations, from its commitment and acceptance of human rights standards (structural indicators), to efforts being undertaken by the primary duty-bearer, the State, to meet the obligations that flow from the standards (process indicators), on to the results of those efforts from the perspective of rights-holders (outcome indicators).

52. OHCHR has developed sample indicators of selected human rights, including the right to adequate food, the right to health, the right to adequate housing and the right to education, which are being validated through consultations at the regional and subregional levels. By way of illustration, reproductive health has been identified as one of the attributes of the right to health, as defined in the International Covenant on Economic, Social and Cultural Rights (art. 12) and sample indicators identified are, inter alia, the date of entry into force and coverage of a national policy on maternal and reproductive health (structural indicator); the proportion of births attended by skilled health personnel (process indicator); and the maternal mortality ratio (outcome indicator).

53. To assess progress over time in the implementation of rights, statistical human rights indicators must be combined with specific targets and benchmarks. For example, the strategy may define a benchmark of the reduction of maternal mortality by 10 per cent over a five-year period. Moreover, when indicators and benchmarks are used to assess the progressive realization of rights, the question inevitably arises of how to determine what would be a realistic and reasonable pace of progress in the light of the available resources. In other words, the question of whether a benchmark of the reduction of maternal mortality by 10 per cent over a five-year period is both a sufficiently ambitious and realistic objective.

54. To answer this question, the human rights treaty bodies have generally deferred to the judgement of States parties themselves. While the process of setting targets and benchmarks should meet some procedural requirements — notably by being defined on the basis of an inclusive and participatory process — each State party must identify, in the light of its specific circumstances, what would be realistic benchmarks for the progressive realization of rights. The Committee on Economic, Social and Cultural Rights has suggested that it could assist States in this task by engaging with States parties in a process of "scoping", that is, a joint consideration by the State party and the Committee of the indicators and benchmarks against which progress is to be evaluated over a reporting period.[49] National human rights institutions could play a similar role and assist States in identifying relevant indicators and benchmarks.

Challenges and limits of indicators and benchmarks

55. The use of human rights indicators as a means effectively to monitor the progressive realization of rights poses a number of challenges. First of all, the collection of disaggregated statistical data in all areas covered by the Covenant requires a level of organizational capacity and resources which is beyond the capacity of many States. In such cases, the treaty monitoring bodies have encouraged States to seek international assistance, for example by indicating to these bodies the nature and extent of any assistance needed to enable them to comply with their monitoring obligations.[50]

56. Another challenge in the use of human rights indicators is that of endeavouring to capture the complexity of individual human rights in a manageable set of statistical indicators. In this regard, it is relevant to bear in mind the obvious limits of statistical variables. No matter how detailed and disaggregated, such data will always provide only a limited part of the picture of rights fulfilment. Hence, the need for different forms of monitoring mechanisms, including international treaty monitoring by expert bodies that rely on a broader range of information in their

assessments. Nonetheless, statistical indicators combined with specific targets and benchmarks can provide useful pointers to specific human rights challenges and problem areas, and serve as a tool to support a more comprehensive human rights assessment.

B. Monitoring of national budget processes

57. National budgets are key political documents reflecting the policy priorities of Governments as well as the level of public resources. The analysis of budget processes is therefore clearly relevant for monitoring efforts towards the progressive realization of rights, including the extent to which the most efficient use is made of available resources. In the words of the independent expert of the Human Rights Council on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights:

> "A country's ability to progressively realize economic, social and cultural rights hinges upon, in no small measure, its capacity to formulate an appropriate budget based on sound policy and participation, and to ensure its effective and efficient utilization."[51]

58. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have used macrolevel budget information as a broad indication of policy priorities and as a basis for general recommendations to increase funding for specific areas and programmes. For example, the guidelines for periodic reports adopted by these Committees request States to provide information on resources allocated to specific sectors as a proportion of gross national product (GNP). Equally, the Committee on the Rights of the Child has noted:

> "No State can tell whether it is fulfilling children's economic, social and cultural rights 'to the maximum extent of ... available resources' ... unless it can identify the proportion of national and other budgets allocated to the social sector and, within that, to children, both directly and indirectly."[52]

59. Consistent with the principle of States' margin of appreciation, the treaty bodies have not ventured into prescribing specific budget targets, apart from occasional references to various internationally agreed budget targets.[53] To facilitate further discussion on how the analysis of budget information can be used in treaty monitoring, the Committee on the Rights of the Child will devote its annual day of general discussion on 21 September 2007 to this subject, focusing on investments "to the maximum of available resources" for the implementation of the economic, social and cultural rights of children.[54]

60. The monitoring of national budgets is closely related to the monitoring of national policies and strategies, and holds potential for further use by treaty monitoring bodies. Just as the human rights standards imply an obligation to formulate strategies and monitor progress through indicators and benchmarks, similar requirements could be applied to national budget processes. As a minimum, information on the formulation and execution of national budgets should be publicly available to facilitate accountability, a requirement which is not met in many countries.[55]

61. Civil society organizations are leading the way in showing how the analysis of national and local budgets can be used to generate debate about the policy priorities

of Governments and to hold them accountable with regard to their human rights commitments[56] Typically, such analyses have looked at specific human rights indicators (such as low school enrolment rates among girls) in the light of legal obligations and political commitments assumed by Governments and have compared this information with appropriations in the national budget dedicated to a relevant sector. Equally, budget data have been used to expose how budget allocations (and per capita spending) favour certain groups or regions to the detriment of others and how such disparities are reflected in human rights outcomes. Budget figures have also been used to analyse developments over time in budget allocations to particular sectors (for example, health, education or housing) as a proportion of GNP, pointing to decreases in budget allocations as an indication of a failure to take steps towards the progressive realization of economic, social and cultural rights.[57]

Challenges and limits of monitoring national budget processes

62. While the analysis of national or regional budgets is obviously relevant for an assessment of efforts made towards the realization of economic, social and cultural rights, it also poses a number of challenges.

63. For example, the national budget does not necessarily give the full picture of the financial resources available to a State. In this regard it should be noted that any realistic assessment of the financial resources available within a State would need to look beyond budget figures and include potential unused sources of government revenue. In some cases tax reforms to ensure a more equitable distribution of resources may be an effective strategy to give practical meaning to the requirement of using the maximum of available resources.

64. Equally, a simple analysis of budget appropriations is limited in several important ways. As a recent United Nations Development Fund for Women (UNIFEM) publication points out, the size of budget allocations to different sectors has no necessary relationship with improved access to services and realization of rights, as many other factors come into play.[58] Often, the key issue is not the amounts spent, but rather how those funds are spent. To capture this aspect, there is a need for accountability mechanisms to assess the effectiveness of spending.

65. Despite such challenges and limitations, budget figures can be a useful tool in monitoring States' efforts towards the realization of economic, social and cultural rights. Without entering into the complexities of defining the actual level of available resources, it is relatively straightforward for monitoring bodies to point to specific problems, such as underfunding of programmes when there is a clear mismatch between policy objectives and budget allocations, manifest disparities in the use of public funds for specific groups and regions, or significant decreases in funding to particular sectors leading to a deterioration in the protection of economic, social and cultural rights.

C. Review of violations relating to progressive realization

66. Judicial review of individual complaints relating to breaches of States' obligations can also serve to monitor the progressive realization of rights. Such judicial review can potentially be an important supplement to other forms of monitoring, and the international treaty monitoring bodies and judicial review

mechanisms at the national and international levels can play an important role in this regard.

The potential role of individual complaint procedures

67. The review of individual cases allows for a much more detailed analysis than is the case for the periodic review of State reports. Such individual reviews could in principle also address violations relating to progressive realization. However, individuals are not able to submit complaints under the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, which are the only two out of the nine core human rights treaties not to include an individual complaint mechanism.

68. While complaints relating to economic, social and cultural rights have been brought before existing national and international procedures, the lack of a mechanism covering economic, social and cultural rights in a more comprehensive manner remains a lacuna in the international human rights protection system. Interestingly, however, the recently adopted Convention on the Rights of Persons with Disabilities provides for an individual complaint procedure in an optional protocol. Once that Convention and its optional protocol enter into force, it will be the first such procedure which could address breaches of the progressive realization of economic, social and cultural rights, albeit only for persons with disabilities.[59] Equally, an open-ended working group of the Human Rights Council has taken another significant step to promote implementation of economic, social and cultural rights by initiating negotiations on an individual communications procedure under the International Covenant on Economic, Social and Cultural Rights.

Margin of appreciation in judicial review

69. To assess compliance with obligations "to take steps" "by all appropriate means" towards the progressive realization of economic, social and cultural rights, an adjudicating body needs not only to assess outcomes, that is, the extent to which progress has been made in the level of realization of a given right, but also the process, including the extent to which measures taken by a State are "appropriate" in view of the objective of moving towards the realization of rights.

70. It is sometimes argued that this is inherently a matter of policy and outside the remit of legal or quasi-judicial review. In other words, that national courts and international treaty monitoring bodies are not competent to pronounce themselves as to the reasonableness of national policies, as doing so would interfere with the prerogative and democratic mandate of national legislatures.

71. In this regard, the Committee on Economic, Social and Cultural Rights recently (10 May 2007) adopted a statement clarifying how it might examine communications concerning obligations subject to progressive realization. It notes that a failure to take "reasonable" steps, or to take any steps at all, where such failure cannot be convincingly justified by a lack of resources, would constitute a breach of Covenant obligations. In such cases, the Committee would respect "the margin of appreciation of States to take steps and adopt measures most suited to their specific circumstances" and "to determine the optimum use of ... resources and to adopt national policies and prioritize certain resource demands over others".[60]

72. This approach is consistent with the margin of appreciation doctrine reflected in the jurisprudence of the European Court of Human Rights and other judicial bodies.[61] However, it should be stressed that the margin of appreciation enjoyed by States parties is never absolute. Human rights law, by definition, imposes limits on the legitimate scope of State action. In other words, the extent of a State's discretion in setting policy and budget priorities is limited by the human rights standards a State has committed itself to uphold.

73. Consequently, the role of (quasi-)judicial review, both at the international and national levels, is not to prescribe the policy measures a State needs to take to respect, protect and fulfil human rights. Rather, independent judicial and quasi-judicial bodies fulfil the role of assessing the reasonableness of the measures taken, in view of the object and purpose of the treaty. Hence, as the Committee on Economic, Social and Cultural Rights points out in its statement, it would assess whether a State party has taken "reasonable steps to the maximum of its available resources to achieve progressively the realization of the provisions of the Covenant".

74. The jurisprudence of the Constitutional Court of South Africa illustrates how such assessment can be carried out in practice. The South African Constitution of 1996 enshrines a range of socio-economic rights, some of which are qualified by a resource availability clause similar to that of the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. Thus, section 26 (Housing), paragraph 2, states: "The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights". In a ruling concerning the right to adequate housing, the Court noted:

> "The precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable ... A court considering reasonableness will not enquire whether other more desirable or favourable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognize that a wide range of possible measures could be adopted by the State to meet its obligations. Many of these would meet the requirement of reasonableness."[62]

75. As the Committee on Economic, Social and Cultural Rights notes in its statement of 10 May 2007, an assessment of the "reasonableness" of measures taken by a State party would involve considerations of whether the decision-making process had taken full account of the norms and standards recognized in the Covenant and whether the measures taken were targeted towards the realization of economic, social and cultural rights. Should a failure to take reasonable measures be established, the Committee would recommend that remedial action be taken, but would leave the decision on the means of doing so to the discretion of the State party concerned.[63]

V. Concluding remarks

76. The present report clarifies how the concept of the progressive realization of economic, social and cultural rights has acquired a specific meaning in international human rights law, informed notably by the work of the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the special procedures of the Human Rights Council. The concept refers to an immediate obligation of States parties to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as well as the Convention on the Rights of Persons with Disabilities once it enters into force, to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights. Equally, the concept is seen to imply an assumption of the impermissibility of deliberately retrogressive measures, as well as a duty immediately to satisfy, as a matter of priority, minimum essential levels of economic, social and cultural rights (core minimum obligations).

77. Moreover, the human rights treaties impose a number of obligations relating to economic, social and cultural rights which require immediate implementation irrespective of the level of available resources, notably the obligation to guarantee non-discrimination in the enjoyment of those rights.

78. The international human rights standards generally do not prescribe specific measures for the implementation of economic, social and cultural rights. Nonetheless, the human rights standards provide guidance for States parties in their policymaking. First of all, the obligation "to take steps" towards the progressive realization of rights, presupposes effective and continual assessments of the state of enjoyment of rights. Such human rights assessments are a fundamental precondition for formulating targeted strategies for the realization of economic, social and cultural rights. Moreover, to allow for accountability in their implementation, human rights strategies must incorporate relevant indicators and benchmarks. In this regard, internationally agreed development targets, such as the Millennium Development Goals, serve as important benchmarks for the progressive realization of some economic and social rights, including within the framework of international assistance and cooperation.

79. As has been underlined in the present report, government self-assessments need to be complemented by independent monitoring to ensure accountability. In that regard, the international human rights treaty bodies, through their review of periodic reports and individual communications, fulfil important functions. While individual communications concerning the full range of economic, social and cultural rights are currently only foreseen under the Convention on the Rights of Persons with Disabilities, ongoing negotiations on an optional protocol to the International Covenant on Economic, Social and Cultural Rights hold much promise for strengthening the monitoring and implementation of these rights.

80. Equally, the appropriate role of treaty monitoring bodies in assessing questions relating to public policies has been discussed above. The treaty bodies have afforded States a broad margin of appreciation in determining the measures which are most appropriate under their specific circumstances. However, States' margin of appreciation is never total and it is therefore fully appropriate for the treaty monitoring bodies to monitor State policies to implement obligations assumed under

the international human rights treaties, including those subject to progressive realization.

Notes

[1] At the United Nations Millennium Summit 191 States committed themselves to eight development goals to be attained by 2015 (see General Assembly resolution 55/2, para. 19).

[2] Of the nine core international human rights treaties, seven are currently in force: International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). The two latest core human rights treaties, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance, were adopted in December 2006 and have still to enter into force.

[3] The Convention on the Rights of Persons with Disabilities, adopted by the General Assembly on 13 December 2006 in resolution 61/106, will enter into force after the twentieth ratification or accession. As of 1 June 2007 it had 97 signatures and one ratification.

[4] It should be noted that neither the Convention on Rights of the Child nor the Convention on the Rights of Persons with Disabilities defines which of the rights recognized in the respective treaties would be considered economic, social and cultural rights. As the Committee on the Rights of the Child has observed, many of the rights enumerated in the Convention on the Rights of the Child contain elements of both civil and political rights and economic, social and cultural rights, reflecting the fact that enjoyment of the two sets of rights is inextricably intertwined.

[5] See 1989 report of the Working Group on a draft convention on the rights of the child to the Commission on Human Rights (E/CN.4/1989/48, paras. 170-177). For a discussion of the drafting history of article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, see P. Alston and G. Quinn, "The nature and scope of States Parties' obligations under the International Covenant on Economic, Social and Cultural Rights" in *Human Rights Quarterly*, vol. 9 (1987), pp. 156-183. See also a proposal of the delegation of India at the fourth session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, available at http://www.un.org/esa/socdev/enable/rights/ahc4india.htm.

[6] CESCR general comment No. 3 (1990) on the nature of States parties obligations, para. 9.

[7] Committee on the Rights of the Child (CRC) general comment No. 5 (2003) on the general measures of implementation of the Convention on the Rights of the Child, para. 8.

[8] See footnote 6.

[9] The respect, protect, fulfil typology has gained wide acceptance as a useful method of analysing human rights obligations, as reflected in various publications of United Nations agencies and programmes, such as the Food and Agriculture Organization of the United Nations, UN-Habitat, the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund and the World Health Organization.

[10] The immediate obligation of non-discrimination is affirmed by all the core international human rights instruments. The wording of the treaties clearly shows that this obligation does not allow for progressive realization (i.e. realization over time to the maximum of available resources). Thus article 2, paragraphs 2 and 3, of the International Covenant on Economic, Social and Cultural Rights refers to obligations to "guarantee" and to "ensure". Similarly, article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination imposes

an obligation immediately to prohibit and eliminate racial discrimination in all its forms in the enjoyment of economic, social and cultural rights.

[11] Other provisions which CESCR considers to require immediate application include those concerning equal remuneration for work of equal value without distinction of any kind (art. 7 (a) (i)); the obligation to ensure that primary education shall be compulsory and available free to all (art. 13 (2) (a)); the obligation to respect the liberty of parents to choose for their children schools other than those established by the public authorities, which conform to minimum educational standards (art. 13 (3)); the obligation to protect the liberty of individuals and bodies to establish and direct educational institutions which conform to minimum standards (art. 13 (4)); and the obligation to respect the freedom indispensable for scientific research and creative activity (art. 15 (3)). See general comment No. 3, para. 5. Equally, as CESCR and the Special Rapporteur on the right to adequate housing have pointed out, the right to adequate housing (art. 11 (1)) gives rise to an immediate obligation to ensure legal security of tenure to all households and protect individuals against forced evictions. See e.g. general comment No. 7 (1997) on the right to adequate housing (art. 11 (1) of the Covenant): forced evictions. The Committee defines the term "forced eviction" "as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection" (ibid. para. 3); see also report of the Special Rapporteur on the right to adequate housing (E/CN.4/2006/41, para. 25).

[12] See e.g. Committee on Economic, Social and Cultural Rights (CESCR) general comments No. 3, paras. 2 and 9, and No. 14 (2000) on the right to the highest attainable standard of health, para. 31.

[13] CESCR general comment No. 13 (1999) on the right to education, para. 45. See also general comments No. 3, para. 9, and No. 14, para. 32.

[14] See e.g. CESCR general comment No. 3, para. 9.

[15] CESCR general comment No. 3, para. 10. See also e.g. report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2003/58), para. 53, and report of the Special Rapporteur on the right to food (E/CN.4/2002/58), para. 39. The notion of minimum core obligations is also reflected in the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (formulated by a group of international law experts in 1986) as an obligation towards ensuring "respect for minimum subsistence rights" (see E/C.12/2000/13, para. 25).

[16] See e.g. CESCR general comments No. 3, para. 10, and No. 13, para. 45.

[17] See CESCR general comments Nos. 14 to 18.

[18] CESCR general comment No. 14, para. 43.

[19] Commission on Human Rights resolution 1994/20, para. 11.

[20] A/5655 (1963), para. 2318. See also Alston and Quinn, op. cit., p. 172.

[21] See e.g. CESCR general comments No. 12 (1999) on the right to adequate food, para. 21 and No. 14, para. 53.

[22] CESCR general comment No. 9 (1998) on the domestic application of the Covenant, para. 3.

[23] According to the Committee, "a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not 'appropriate means' within the terms of article 2, paragraph 1, ... or that, in view of the other means used, they are unnecessary" (general comment No. 9, para. 3). The issue of legal remedies for violations of economic, social and cultural rights is further discussed in the report of the United Nations High Commissioner for Human Rights to the 2006 substantive session of the Economic and Social Council (E/2006/86).

[24] CESCR general comment No. 3, paras. 4 and 7.

[25] See also the International Covenant on Economic, Social and Cultural Rights, art. 12, para. 2, art. 13, para. 2, and art. 14.

[26] For example, the WHO Global Strategy on Diet, Physical Activity and Health (2002) gives guidance as to measures to enable consumers to make healthy choices, including through incorporating health literacy into adult education programmes, encouraging marketing and ensuring standardized labelling with comprehensible information on the content of food items (para. 43) (available at http://www.who.int/dietphysicalactivity/strategy/eb11344/strategy_english_web.pdf). Likewise, the International Plan of Action on Ageing, adopted by the Second World Assembly on Ageing (2002), provides guidance as to measures to meet the objective of ensuring employment opportunities for all older persons who want to work, including through the "implementation of policies such as: increasing older women's participation; sustainable work-related health-care services with emphasis on prevention, promotion of occupational health and safety so as to maintain work ability; access to technology, life-long learning, continuing education, on-the-job training, vocational rehabilitation and flexible retirement arrangements; and efforts to reintegrate the unemployed and persons with disabilities into the labour market" (A/CONF.197/9, para. 28).

[27] See e.g. CESCR general comment No. 12, para. 15.

[28] See e.g. CESCR general comments No. 1 (1989) on reporting by States parties, para. 4, and No. 14, para. 43 (f). The obligation is explicitly stated in article 14 of the International Covenant on Economic, Social and Cultural Rights, which requires those States which have not yet been able to secure free and compulsory primary education to all children "to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all".

[29] As CESCR has pointed out, the principal value of an assessment of the current state of realization of economic, social and cultural rights "is to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant" (general comment No. 1, para. 4).

[30] By way of example, the progressive realization of economic, social and cultural rights has been incorporated into the national strategy to address poverty in Bangladesh, with specific targets and benchmarks related to, inter alia, ensuring universal primary education, reducing infant and under-five mortality rates, eliminating gender disparities in primary and secondary education, reducing the proportion of malnourished children and reducing maternal mortality rates. The strategy also seeks to determine the cost of specific programmes required to reach those objectives. ("Bangladesh — unlocking the potential. National strategy for accelerated poverty reduction", Government of the People's Republic of Bangladesh, 16 October 2005, available at http://siteresources.worldbank.org/INTPRS1/Resources/Bangladesh_PRSP(Oct-16-2005).pdf).

[31] CESCR, CRC, special rapporteurs of the Human Rights Council, UNICEF and FAO have recommended the adoption of framework laws, setting out objectives and targets as well as the time frame for their achievement, to promote the rights of the child, as well as the rights to food and to health. See e.g. CESCR general comments No. 12, para. 29, and No. 14, para. 56.

[32] CRC general comment No. 5, para. 33.

[33] The human rights principles which should guide policy measures for the progressive realization of economic, social and cultural rights are also outlined in *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies* (2006) published by OHCHR and available at http://www.ohchr.org/english/about/publications/docs/poverty_strategies.doc. See also "Statement on a common understanding of a human rights-based approach to development cooperation" adopted at the Stamford Interagency Workshop on a Human Rights-Based Approach in the Context of United Nations Reform (May 2003) and endorsed by the United Nations Development Group, available at http://www.undp.org/governance/docs/HR_Guides_CommonUnderstanding.pdf.

[34] See e.g. CESCR general comments No. 14, para. 43 (f); No. 15 (2002) on the right to water, para. 37 (e); and No. 18 (2005) on the right to work, para. 31 (c); and CRC general comment No. 5, para. 29.

[35] For example, in cases where resource allocations "disproportionately favour expensive curative health services which are accessible only to a small, privileged fraction of the population, rather than primary and preventive health care benefiting a far larger part of the population" (CESCR general comment No. 14, para. 19).

[36] The importance of temporary special measures (also referred to as "affirmative measures") has been stressed by all the treaty bodies and the Convention on the Elimination of All Forms of Discrimination against Women, in article 4, paragraph 1, contains a specific reference to such measures. See e.g. CESCR general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, Human Rights Committee general comment No. 18 (1989) on non-discrimination and CRC general comment No. 5.

[37] See e.g. CESCR general comments No. 3, para. 12; No. 14, para. 18; No. 15, para. 13; No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, para. 20. It should be noted that, in this context, cost-effective use of resources does not necessarily mean adopting low-cost measures. Rather, it requires States to make the most effective use of available resources to ensure equal access to human rights for all.

[38] Joint statement by CESCR and the Special Rapporteurs on economic, social and cultural rights of the Commission on Human Rights, "The Millennium Development Goals and economic, social and cultural rights" (E/C.12/2002/13, annex VII).

[39] CESCR and CRC both highlight the monitoring role which national human rights institutions can potentially play (see e.g. CESCR general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights and CRC general comment No. 5, para. 46). The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted in November 2004 by the Council of FAO likewise recommends the establishment of independent human rights institutions to monitor policies and programmes (para. 24).

[40] See e.g. CESCR general comments Nos. 14 to 18, which include specific sections on indicators and benchmarks.

[41] There is generally considerable overlap between traditional indicators of socio-economic development and indicators used to assess compliance with obligations relating to economic, social and cultural rights. As a recent OHCHR publication points out: "Essentially, what distinguishes a human rights indicator from a standard disaggregated indicator of socio-economic progress is less its substance than (a) its explicit derivation from a human rights norm and (b) the purpose to which it is put, namely human rights monitoring with a view to holding duty-bearers to account" (OHCHR, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, para. 13, available at http://www.ohchr.org/english/about/publications/docs/poverty_strategies.doc).

[42] UNDP *Human Development Report 2000*, "Human rights and human development".

[43] See for example WHO, "Consultation on indicators for the right to health", Geneva, 1 and 2 April 2004 meeting report available at http://www.who.int/hhr/activities/Report%20indicatorsmtg04%20FINAL.pdf; UN-Habitat and OHCHR, "UNHRP working paper No. 1: Monitoring housing rights: Developing a set of indicators to monitor the full and progressive realization of the human right to adequate housing", available at http://www.unhabitat.org/pmss/getPage.asp?page=bookView&book=1749; FAO, "The right to food in practice — implementation at the national level", Right to Food Unit, Rome 2006, available at http://www.fao.org/docs/eims/upload/214719/AH189_en.pdf. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted in November 2004 by the Council of FAO equally encourage States to adopt "a national human rights based strategy for the progressive realization of the right to

food" which "could include objectives, targets, benchmarks and time frames" (Guideline 3, Strategies).

[44] See, in particular, Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, reports to the General Assembly, 2003 (A/58/427) and 2004 (A/59/422).

[45] Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, report to the Human Rights Council, 2007 (A/HRC/4/18). The former Special Rapporteur on the right to education, Katarina Tomaševski, also provided a framework for indicators on the right to education in her 2002 annual report (E/CN.4/2002/60).

[46] Report of the chairpersons of the human rights treaty bodies on their seventeenth meeting, held at Geneva on 23 and 24 June 2005 (A/60/278).

[47] The OHCHR panel of experts includes members of the treaty bodies, special rapporteurs of the Human Rights Council, United Nations agencies, academics and non-governmental organizations.

[48] The conceptual and methodological framework is set out in a background paper prepared by OHCHR for the eighteenth meeting of chairpersons, "Report on indicators for monitoring compliance with international human rights instruments" (HRI/MC/2006/7). The background paper builds on the work of the Special Rapporteur on the right to the highest attainable standard of physical and mental health, as well as work that OHCHR has undertaken with FAO and UN-Habitat, in particular.

[49] See CESCR general comments No. 14, para. 58 and No. 15, para. 54.

[50] See e.g. CESCR general comment, No. 1, para. 3.

[51] Report by Bernards Mudho, independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights (E/CN.4/2004/47, para. 22).

[52] CRC general comment No. 5, para. 51.

[53] For example the target of 0.7 per cent of rich countries' GNP as official development assistance, pledged by States at the 2002 World Summit on Sustainable Development, or the 20/20 initiative agreed at the World Summit for Social Development in 1995 whereby developing countries agreed to increase spending in the social sector to 20 per cent of total public expenditure, while donor countries agreed to increase aid to basic social services to 20 per cent of official development assistance.

[54] Further information on the day of general discussion, "Resources for the rights of the child — responsibility of States" is available at http://www.ohchr.org/english/bodies/crc/discussion.htm.

[55] According to the Open Budget Index, a global index rating assessing how accessible information on State budgets is to their citizens, 23 out of 59 countries surveyed in 2006 provided "minimal" or "scant or no" information to citizens on their country's budget (http://www.openbudgetindex.org).

[56] For example, the web page of the International Budget Project (http://www.internationalbudget.org) provides links to more than 40 budget groups around the world and contains various tools developed by these organizations for budget monitoring.

[57] The publication *Dignity Counts: A Guide To Using Budget Analysis to Advance Human Rights* presents one example of how a civil society group has examined developments in health expenditures in the Mexican national budget to monitor compliance with the State's obligation concerning the progressive realization of the right to the highest attainable standard of health (available at http://www.iie.org/IHRIP/Dignity_Counts.pdf).

[58] UNIFEM, *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW*, by Diane Elson, May 2006 (http://www.unifem.org/resources/item_detail.php?ProductID=44).

[59] While complaint procedures under the other core human rights treaties also cover aspects of economic, social and cultural rights (e.g. that under the Convention on the Elimination of All Forms of Discrimination against Women with regard to the economic, social and cultural rights of women), they do not cover obligations relating to the progressive realization of those rights.

[60] Available at http://www.ohchr.org/english/bodies/cescr/docs/e_c_12_2007_1.pdf, paras. 11 and 12.

[61] See e.g. Yuval Shany, "Towards a general margin of appreciation doctrine in international law?", *The European Journal of International Law*, vol. 16, No. 5 (2006).

[62] *The Government of South Africa v. Irene Grootboom and Others*, Case CCT 11/00, judgement of 4 October 2000, para. 41.

[63] Available at http://www.ohchr.org/english/bodies/cescr/docs/e_c_12_2007_1.pdf, para. 13.